

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDING NUMBER: 98-0067

Sales And Withholding Taxes

Calendar Years: 1989, 1990, 1991, 1993, & 1994

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

**I. Tax Administration.** – Imposition of Tax.

Authority: IC 6-8.1-8-2(a)

The taxpayer protests the imposition of sales and withholding taxes.

**II. Tax Administration.** – Penalty.

Authority: IC 6-8.1-10-2

The taxpayer protests the imposition of penalty and collection costs.

STATEMENT OF FACTS

The taxpayer is a sole proprietorship engaged in the business of retail sales of boats and related equipment.

The taxpayer had an old Taxpayer Identification Number for both sales and withholding taxes prior to March 1990. After March 1990, the old Taxpayer Identification Number was only used for withholding returns. The taxpayer was issued a new Taxpayer Identification Number for sales tax in March 1990. The address the Department had for the old Taxpayer Identification Number was incorrect. Any billing sent to the address by the Department was returned by the U.S. Post Office as a "POR", i.e. Post Office Return.

**I. Tax Administration.** – Imposition of Tax.

DISCUSSION

The taxpayer protests billings sent for no-remit returns. A sales tax return for 10/31/89 was filed with the Department with no payment. A withholding return for 12/31/90 was filed with the Department with no payment. The Department timely issued billings for both no-remit returns, which were returned to the Department as "POR"s.

The taxpayer argues that since the taxpayer never received the billings, and since the statute of limitations has expired, the billings are null and void.

Indiana Code section 6-8.1-8-2(a) states, "Except as provided in IC 6-8.1-5-3, the department must issue a demand notice for the payment of a tax and any interest or penalties accrued on the tax, if a person files a tax return without including full payment of the tax or if the department, after ruling on a protest, finds that a person owes the tax before the department issues a tax warrant."

The taxpayer knew the liability was due as the taxpayer filed a return with no payment. The Department satisfied its duty for establishing the liability by sending notice. As such, the liability is valid.

FINDING

The taxpayer's protest is denied. The taxpayer is liable for taxes pertaining to no-remit filings.

**I. Tax Administration.** – Imposition of Penalty.

DISCUSSION

The taxpayer protests the imposition of penalty and collection costs on billings. The taxpayer filed withholding returns for 7/31/90, 8/31/90, 12/31/90, 6/30/91, 10/31/93, 6/30/94, 10/31/94, and 9/30/94. The taxpayer filed a sales tax return for 10/31/89. These returns were either late or no-remit returns. As the Department deemed the filings to be negligent, the Department sent notices to the taxpayer for penalty and other collection costs. The notices were returned to the Department as "POR"s. According to Department records, the taxpayer's correct address was available.

The taxpayer argues the penalties and collection costs should be waived as the notices were never received.

Indiana Code 6-8.1-10-2.1(a) states, "If a person: . . . (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;... the person is subject to a penalty."

The taxpayer knew of his obligation to remit tax as he sent the returns late or with no remittance. The fact that he did not receive a notice is not an issue. Thus, he is subject to penalty according to IC 6-8.1-10-2.1(a).

FINDING

The taxpayer's protest is denied. The taxpayer knew of his obligation to pay tax.